IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15551 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAIBABA AMUSEMENT PARK

Versus

SURENDRANAGAR DIDHREJ NAGAR PALIKA

Appearance:

1. Special Civil Application No. 15551 of 2004

MS SONAL M PATEL for Petitioner No. 1

DS AFF.NOT FILED (N) for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 07/12/2004

ORAL JUDGEMENT

Rule. Shri Navin Pahwa, learned advocate appears on behalf of respondent No.1 and waives service of Rule. Shri Mengdey, learned AGP waives service of Rule on behalf of respondent No.2. With the consent of parties, the matter is taken up for final hearing today.

2. In this petition under Article 226 of the

Constitution of India, the petitioner has challenged the legality and validity of the communication/order passed by the Chief Officer of respondent No.1 Nagarpalika dated 29.11.2004 by which the Chief Officer of the Nagarpalika has directed the petitioner to stop running Anand Mela and the permission which was granted by the Nagarpalika to run the Anand Mela on the land of the Nagarpalika has been cancelled.

3. Shri Samir Dave, learned advocate appearing for the petitioner has submitted that the licence has been granted by the District Magistrate and therefore the Chief Officer has no jurisdiction to cancel the licence. He has also further submitted that even before passing the impugned order/communication no opportunity of being heard had been given to the petitioner as the Chief Officer relied upon certain complaints and in connection with the same also no opportunity of hearing was given to the petitioner.

4. Shri Navin Pahwa, ld. advocate has submitted that what is meant by the Chief Officer in his communication dated 29.11.2004 is to cancel the permission for running the Anand Mela on the land of the Nagarpalika and to use the said land of the Nagarpalika. He has further submitted that as it was found that there are complaints received by the Chief Officer that some games connected with gambling are being played and therefore the order came to be passed directing the petitioner to stop the Anand Mela.

5. Without going into the larger question with regard to jurisdiction and authority of the Chief Officer, this Special Civil Application is required to be allowed only on the ground that the impugned communication/order dated 29.11.2004 is passed without giving any opportunity to the petitioner and without even informing the petitioner with regard to the complaints received by the Chief Officer of the respondent No.1 Nagarpalika. In view of the fact that before passing the impugned order no opportunity of being heard was given to the petitioner, the impugned order is in violation of the principles of natural justice. Hence the impugned communication/order dated 29.11.2004 is required to be quashed and set aside and is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs. It will be open for the Chief Officer to initiate proceedings in accordance with law, and it will be open for the petitioner to contend all the gruonds available to him inclusive of the jurisdiction and authority of the Chief Officer of respondent No.1

Nagarpalika as and when such proceedings are initiated. This Court has not expressed any opinion with regard to authority and/or jurisdiction of the Chief Officer of the Nagarpalika either way.

[M.R. Shah, J.]

rmr.